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Assistant Commissioner for Patents
ATTN: Box MISSING PARTS
Washington, D.C. 20231


Attorney for Applicants

Date: 9 Oct, 2001



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PATENT
Attorney Docket No.: DB000575-023

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Keeth, et al.)	Examiner:	Not yet assigned
Serial No.:	09/934,795)	Art Unit:	2816
Filing Date:	August 22, 2001)		
Title:	256 MEG DYNAMIC RANDOM ACCESS MEMORY			

**PETITION IN RESPONSE TO NOTICE TO FILE
MISSING PARTS OF NONPROVISIONAL APPLICATION**

Assistant Commissioner for Patents
ATTN: Box MISSING PARTS
Washington, DC 20231

Dear Sir:

Applicants hereby petition the Commissioner under 37 C.F.R. 1.63(d)(1) to withdraw the request for submission of an oath or declaration and the request for the accompanying late filing fee of \$130.

I. Introduction

Applicants submitted a copy of the declaration from the prior original application with the filing of the present divisional application (serial no. 09/934,795) in compliance with 37 C.F.R. 1.63(d)(1). Therefore, the application was not missing an oath or declaration when filed and the Applicants should not owe \$130.00. Applicants' \$130 petition fee should be refunded.

II. Argument In Response To Notice To File Missing Oath Or Declaration

The procedure for filing an oath or declaration in a divisional application is set forth in 37 C.F.R. 1.63(d)(1). 37 C.F.R. 1.63(d)(1) provides that:

(d)(1) A newly executed oath or declaration is not required under § 1.51(b)(2) and § 1.53(f) in a continuation or divisional application, provided that:

- (i) The prior nonprovisional application contained an oath or declaration as prescribed by paragraphs (a) through (c) of this section;
- (ii) The continuation or divisional application was filed by all or by fewer than all of the inventors named in the prior application;
- (iii) The specification and drawings filed in the continuation or divisional application contain no matter that would have been new matter in the prior application; and
- (iv) A copy of the executed oath or declaration filed in the prior application, showing the signature or an indication thereon that it was signed, is submitted for the continuation or divisional application.

Therefore, to fulfill the requirements of 37 C.F.R. 1.63(d), the Applicants must demonstrate four things. First, Applicants must show that the prior application contained a proper oath or declaration. Second, Applicants must show that the divisional application was filed by all or fewer than all of the inventors named in the prior application. Third, Applicants must show that the specification and drawings filed in the divisional application contained no new matter. Fourth, Applicants must submit a copy of the executed oath or declaration filed in the original application. Applicants hereby submit the following evidence, in support of this petition under 37 C.F.R. 1.63(d)(1) to have the USPTO withdraw its request for an oath or declaration and the corresponding late filing fee of \$130.00.

A. Prior Oath Or Declaration

A copy of the original declaration, herewith submitted as Exhibit A, complied with all requirements for a proper declaration.

B. Same Or Fewer Inventors

Applicants assert that the divisional application was filed by fewer than all of the inventors named in the original application. A copy of the filed request to delete inventors is submitted as Exhibit B.

C. No New Matter

Applicants assert that no new matter is contained in the specification and drawings of the divisional application.

D. Copy Filed With Application

A copy of the return postcard, herewith submitted as Exhibit C, evidences that a declaration was filed with the filing of the divisional application. Additionally, a copy of the Utility Patent Application

Transmittal, herewith submitted as Exhibit D, shows that a copy of the oath or declaration was filed with the filing of the divisional application.

III. Postcard Is *Prima Facie* Evidence Of Filing

The return receipt postcard contained an itemized list of all papers that were filed with the application. This list includes a specific entry indicating that a Declaration was filed with the application. As Exhibit C shows, this postcard was date-stamped by the USPTO and returned to the Applicants. According to MPEP 503, "[a] postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO." Therefore, Exhibit C is *prima facie* evidence that a declaration was filed at the time that the application was filed. Hence, the declaration is not missing. The Notice of Missing Parts should be withdrawn and the accompanying \$130 petition fee should be refunded.

IV. Conclusion

Applicants respectfully contend that they have demonstrated by this evidence that a copy of the original declaration was filed with the divisional application in accordance with 37 C.F.R. 1.63(d)(1). Accordingly, Applicants petition the Commissioner to withdraw the request for submission of an oath or declaration and the corresponding late fee of \$130.00. Applicants additionally request that Commissioner refund the \$130.00 check that was submitted with this petition to cover the petition fee under 37 C.F.R. 1.117(h).

Respectfully Submitted,



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